In the High Court of Uttaranchal, Nainital.

Appeal against Order No. 1409/2001
(FAFO No. 675/1995)

1- Heera Mani Joshi S/o Ghanshyam Joshi

2- Darshani Devi D/o Ghanshyam Joshi
Both R/O 16, Nai Basti Park Road,
Dehradun …. Claimants/Appellants.

Versus

1- O.N. Bhatia S/o Hira Nand Bhatia
R/o Bhatia Transport Company,
61, Gandhi Road, Dehradun.

2- United India Insurance Company Ltd.
Cannaught Place Dehradun through
Its Manager …. Opp.Parties/Respondents.

Sri Rajendra Dobhal, Advocate for the appellants.
Sri K.K. Shah, Advocate for respondent Insurance Company.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: May 5, 2006

This Appeal against Order has been filed by the claimants/appellants U/S 173 of the Motor Vehicle Act against the judgment and award dated 4.5.1995 passed by Motor Accident Claim Tribunal/ II Addl. District Judge, Dehradun in M.A.C.P. No. 218/1990 Heera Mani and others Versus O.N. Bhatia and others.

2- Brief facts of the case are that on 9-9-1989 the deceased Jai Devi Joshi was driving the truck No. UTL 9575. He started in the early morning to load truck from PPCL mine plot for Harrawala. When he reached near Masrana bend the brakes of the truck stopped functioning due to mechanical fault. The deceased driver asked the conductor to place wooden pieces, i.e. Gutka under wheels, but he failed and the truck fell down in the Khud which resulted into the death of the driver Jai Dev Joshi. The accident was caused due to negligence of the conductor of the vehicle. The deceased was earning Rs. 1000/- per month as salary besides Rs. 20/- per day on trip as allowance in addition to salary. Thus in all

total monthly income of the deceased was Rs. 2000/-. The deceased was of sound health and would have lived upto the age of 70 years if he could not have met with untimely death. He was aged about 25 years. The claimants were the brother and sister of the deceased.

4- The opposite party/respondent No.1 filed written statement and alleged that the claimants were not dependent on the deceased and, therefore, they were not entitled to get any compensation. It is true that the deceased was driving the aforesaid truck at the time of the accident but he was not earning Rs. 2000/- per month. The accident in question was caused due to failure of the brakes. The deceased had never asked the conductor of the truck to place Gutka under the wheels.

5- The opposite party/respondent No.2 contested the petition on the grounds that the claimants were not dependents of the deceased. Besides, the deceased was not a third party and, therefore, the claimants were not entitled to any compensation and the petition was liable to be rejected.

6- On the basis of the pleadings, the following issues were framed by the M.A.C.T. concerned:-

1- Whether the accident in question was caused by negligent of the conductor of truck No. UTL 9575 on Masrana bend as alleged in the petition? If so, its effect?.

2- To what amount of compensation, the claimants were entitled and from whom?.

3- Whether the deceased was a worman and claimants are not his legal heirs? If so, its effect?.

7- The claimants in support of their case, produced P.W.1, Om Prakash, P.W.2, Heera Mani and P.W.3, Kashmiri Lal. The respondents did not adduce any evidence.

8- The learned Tribunal after having perused the entire evidence on record and hearing the learned counsel for the parties was pleased to allow the claim petition and awarded a compensation of Rs. 25,000/- in favour of claimant No.1. The Tribunal also directed the Opposite Party No.2, United Insurance

Company, who is the insurer of the vehicle in question, to pay the amount to the claimant/appellant No.1 within a period of one month.

9- Feeling aggrieved by the aforesaid impugned judgment and award the claimants have preferred this appeal before this Court.

10- We have heard the learned counsel for the parties and perused the record.

11- The evidence on record shows that the accident in question was caused due to negligence of the conductor of the truck in question. The deceased Jai Dev was driving the truck No. UTL 9575 at the time of the accident. P.W.1, Om Prakash and P.W.3, Kashmiri Lal have deposed in their evidence that the deceased used to drive the truck in question belonging to Bhatia Transport. On 9-9-1989 these witnesses were going from Masrana to Dehradun and were waiting for the bus near the big bend of Chamba-Mussoorie Road. At that very time truck No. UTL 9575 came from Masrana mine and stopped at the bend where these witnesses were standing. The truck started retreating, the driver Jai Dev (deceased) asked the conductor to get down and put wooden pieces under the wheels, but the conductor was late in doing so. Therefore, the truck retreated and fell down in the Khud. Nothing has come out in the evidence of P.W.1, Om Prakash and P.W.3, Kashmiri Lal to show any reason to disbelieve their testimony. The trial court has rightly came to the conclusion that the accident in question was caused due to the negligence of the driver of the truck in question.

12- As far as the amount of compensation is concerned, the record reveals that the claimants/appellants are the brother and sister of the deceased. The appellant No.2 Darshani Devi is admittedly married while appellant No.1 is doing the work of “Panditai”. He has his three children and he is aged about 45 years at the time of filing the claim petition in the year 1990. Appellant No.1, Heera Mani, who has been produced before the trial Court as P.W.2, has deposed in his cross-examination that he had to take loan for the marriage of his sister Darshani Devi, who is claimant/appellant No.2. Therefore, it is quite clear that both the

claimants/appellants were major and were not at all dependent upon the income of the deceased. However this fact cannot be ignored that after the death of Jai Dev the claimant/appellant No.1 had to look-after Smt. Darshani Devi, who was not married at that time. Therefore the claimant/appellant No.1 could only be said to be dependent on the income of the deceased to the extent of his contributing the money in the marriage of claimant/appellant No.2. The trial court has rightly awarded the compensation in favour of claimant/appellant No.1 to a limited extent, i.e. Rs. 25,000/-. As far as claimant/appellant No.2 Darshani Devi is concerned, in view of the expression "legal representative" envisaged in Section 110-A of the Motor Vehicle Act, she is not entitled to get any compensation.

13- We could lay our hands in a case of Allahabad High Court **Nathi Singh Vs. Vimlesh Gupta and others** reported in **1989 A.C.J. 1128** in which it has been held that "married daughter is not dependent upon the deceased and she cannot claim any compensation".

14- The Hon'ble Supreme Court has held that the word "legal representative" is to conform to Indian circumstances and conditions which necessarily involved a selective application of the English Law in India. The Hon'ble Apex Court has also held that the brother of the deceased would be "legal representative". We also could lay our hands in a decision of Madhya Pradesh High Court **Shyama and another Vs. Radheshyam and others** reported in **1992, A.C.J. page 863** in which it has been held that "although brother and sister of the deceased are his legal representative but in order to claim compensation, it has to be shown that they were dependent on the income of the deceased".

15- In view of the aforesaid situation, the claimant/appellant No.1 would be entitled for a compensation to a limited extent because whatever expenses the deceased would have borne for claimant/appellant No.2 now would be met by the claimant/appellant No.1 and as we have already observed that the claimant/appellant No.1 will have to contribute the finance to the marriage of claimant/appellant No.2 and it was also the duty of

the claimant/appellant No.1 to provide some dowry to the claimant/appellant No.2. The trial court thus has rightly awarded an amount of Rs. 25,000/- as compensation in favour of the claimant/appellant No.1.

16- We do not find any ground for interference in the impugned judgment and award passed by the trial court.

17- The appeal thus lacks merit and is liable to be dismissed.

18- Accordingly the appeal is dismissed. The impugned judgment and award dated 4-5-1995 passed by the Motor Accident Claim Tribunal/II Addl. District Judge Dehradun in M.A.C.P. No. 218/1990 is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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